

ESTTA Tracking number: **ESTTA68636**

Filing date: **02/28/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	SMITHKLINE BEECHAM PLC
Granted to Date of previous extension	03/01/2006
Address	980 GREAT WEST ROAD BRENTFORD MIDDLESEX, TW8 9GS UNITED KINGDOM
Party who filed Extension of time to oppose	
Relationship to party who filed Extension of time to oppose	In accordance with 37 CFR 2.102, the present opposition is being filed by a different party in privity with the party granted the previous extension. Specifically, the party granted the extension, Signal Investment & Management Co., was an exclusive licensee to the present Opposer, SmithKline Beecham PLC.

Attorney information	UNA L LAURICIA PEARNE & GORDON LLP 1801 E 9TH ST SUITE 1200 CLEVELAND, OH 44114 UNITED STATES ulauricia@pearnegordon.com,rsharpe@pearnegordon.com,tmdocket@pearnegordon.com Phone:216-579-1700
----------------------	---

Applicant Information

Application No	78301767	Publication date	11/01/2005
Opposition Filing Date	02/28/2006	Opposition Period Ends	03/01/2006
Applicant	Bio Therapeutics, Inc. Suite 1 1850 N.W. 69th Avenue Plantation, FL 33313 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and sevicees in the class are opposed, namely: Non-medicated topical skin care ointment
Class 005. All goods and sevicees in the class are opposed, namely: Medicated topical skin care ointment

Attachments	Notice of Opposition.pdf (4 pages)
-------------	--------------------------------------

Signature	/Una L Lauricia/
Name	UNA L LAURICIA
Date	02/28/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/301,767
Published in the Official Gazette: November 1, 2005

SMITHKLINE BEECHAM PLC

Opposer,

v.

BIO THERAPEUTICS, INC.

Applicant.

Mark: PHYLODERM

Opposition No.: _____

NOTICE OF OPPOSITION

SmithKline Beecham PLC (Opposer), a corporation organized under the laws of the United Kingdom, having a principal place of business at 980 Great West Road, Brentford, Middlesex, United Kingdom, TW8 9GS, will be damaged by registration of the mark shown in Application Serial No. 78/301,767 and hereby opposes the same.

The Extension of Time to Oppose filed in Application Serial No. 78/301,767 was requested by and granted to Signal Investment & Management Co., who was an exclusive licensee to Opposer at the time the extension was filed. According to 37 CFR 2.102 and Section 206.01 of the TBMP, an opposition filed in a different name will be accepted if filed in the name of a person in privity with the person who requested and was granted the extension of time. Thus, because Opposer is in privity with Signal Investment & Management Co., namely through an exclusive license agreement, it is proper for Opposer to file this Notice of Opposition.

The grounds for opposition are as follows:

1. Applicant seeks to register the mark PHYLODERM for non-medicated topical skin care ointment in International Class 003 and for medicated topical skin care

ointment in International Class 005 as evidenced by publication of said mark in the November 1, 2005 issue of the Official Gazette.

2. Opposer rightfully owns two trademarks, U.S. Trademark Registration Nos. 408,558 and 3,011,144, for the mark PHISODERM for lathering, emollient and detergent preparation, namely skin cleansers in International Class 003.

3. Both Applicant's and Opposer's goods fall into the category of skin care products and will move through the same or similar channels of trade and will be sold to the same customers.

4. Applicant's trademark application for PHYLODERM is an intent to use application. Applicant has not alleged use in commerce.

5. Opposer has used the PHISODERM trademark in commerce continuously since at least as early as 1944 and therefore, Opposer's use of the PHISODERM trademark has priority over Applicant's prospective use of the mark PHYLODERM.

6. Opposer's mark is widely known and recognized and identifies to the public that Opposer is the origin of the goods with which the mark is associated.

7. Opposer has built up valuable goodwill in its mark and has expended considerable sums in advertising and publicizing said mark in association with Opposer's goods.

8. The goods for which Applicant seeks to register the mark PHYLODERM are substantially similar to the goods with which Opposer's mark PHISODERM has been used as Applicant's goods consist of, and Opposer's goods include, skin care products.

9. Applicant's mark is confusingly similar in sound, appearance, and impression to Opposer's registered trademarks.

10. In view of the fact that Applicant's mark and Opposer's registered trademarks are confusingly similar and are used for skin care products, it is likely that distributors and purchasers of such goods will be confused into believing that Applicant's goods originate or are associated with Opposer.

11. Applicant's use of PHYLODERM will cause confusion or mistake as to the origin of Applicant's goods and result in injury or threatened injury to Opposer and Opposer's long established rights in its mark PHISODERM.

12. Opposer has a right to maintain and continue the goodwill, reputation, and recognition which Opposer's mark PHISODERM has acquired without the confusion, deception, or misunderstanding that Applicant's registration of PHYLODERM will cause in the minds of purchasers as to the source of goods with which Opposer's mark is associated.

WHEREFORE, Opposer prays that the U.S. Patent and Trademark Office refuse registration of the mark shown in Application Serial No. 78/301,767 for the goods specified therein and sustain this opposition in favor of Opposer.

This Notice of Opposition is being submitted electronically and the fees required by 37 CFR 2.6(a)(17) in the amount of \$600.00 is submitted by way of Deposit Account No. 16-0820.

Respectfully submitted,

/Una L. Lauricia/

Richard A. Sharpe
Una L. Lauricia
Pearne & Gordon, LLP
1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114
(216) 579-1700
Attorneys for Opposer

Date: February 28, 2006

CERTIFICATE OF MAILING

I hereby certify that the Notice of Opposition and required fee are being submitted electronically through the ESTTA website established by the U.S. Trademark Trial and Appeal Board.

Una L. Lauricia

Typed or printed name of person signing certificate

/Una L. Lauricia/

Signature

February 28, 2006

Date